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To: U.S. Department of State, Adoption Regulations Docket, State/AR-01/96

From: Children's Home Society & Family Services (formerly Children's Home Society of MN), David Pilgrim, Vice President, Adoption Services

Date: November 7, 2003

RE: 9IAA Regulations/Hague Convention of International Adoption

Children's Home Society & Family Services is a 114 year old multi service child welfare agency that has placed over 22,000 children for adoption of which over 12,000 have been children from other countries. In 2002, CHSFS placed about 600 children for adoption, of which about 500 were international adoptions. It is a founding member of CWLA, NCFA, and JCICS. It is fully accredited by COA and has been since COA was created. David Pilgrim has 33 years of experience of providing adoption services at all levels and is an adoptive parent.

CHSFS has, since the beginning, fully supported the US involvement in the formation and implementation of the Hague Convention on Intercountry Adoption. We have looked forward to the publication of the regulations, as this is where the viability of implementation is delineated. While there is much in the regulations that support good international adoption practice we find that specific regulations raise serious concerns about whether any agency, organization or individual could continue to provide adoption services in countries that are members of the convention. Given the seriousness of these concerns and the expressed desire of the State Department to "get it right" we strongly urge that revised regulations be drafted for further comment before final regulations are issued.

I. 96.46: Assumption of Liability

We believe that 96.46 (C) (1) is unworkable. The assumption of liability by accredited agencies for the actions of those involved in the adoption process from the child's sending country does not meet the test of the reality in intercountry adoption for two reasons:

- It is impossible for an agency to have complete knowledge and control of what is done by those in other countries. It is like expecting the State Department to have complete understanding of all and everything its' agents, representatives, contractors do in every country. Those of us who have worked with embassies in other countries know that is not true, and that it is unrealistic to think that it

- is even possible. **Attempting to achieve this impossibility will require a large investment of staff and administrative tools, which will only drive up the costs of adoption. This was not the intent of the IAA legislation.**
- We have been told by our insurance agent/broker that it is impossible to obtain insurance for such liability. Even if it were, the cost of such insurance will greatly drive up the cost of adoption. In 2003, CHSFS professional liability insurance increased \$120,000 without having had any losses and after having doubled our deductible to \$10,000.

We find that the tone of 96.46 is punitive and an invitation to lawsuits rather than resolving issues through a process of understanding, cooperation, negotiation, or mediation when there are grievances. We all know that the practice of civil lawsuits is an attractive and lucrative one that has, for example, greatly driven up the costs of medical practice to the point that even good doctors are beginning to leave their practices. Such could very well be the case in intercountry adoption as it pertains to the Hague Convention if the current regulations are in place. More importantly, however, is that for intercountry adoption is to work best for children and families, the relationship between the agency, the adopting family, and the persons it must work with in the child's country, must be one of trust, cooperation, and open communication. We feel that the regulations as currently written tend to promote an adversarial one, which can work against a reasonable and successful adoption process. Again, we do not believe this was the intent of the legislation. And there is no need for this. Indeed, when one looks at the well over 10,000 international adoptions per year, the overwhelming majority goes well. There are "bad apples" in the field of adoptions, but the liability and complaint process seems to shake the entire apple tree, and more than "bad apples" will fall while surely increasing the costs for adoptive parents. If there is a need for adversarial action, the court system provides this, as evidenced by wrongful adoption lawsuits.

Furthermore, **we fear that if the proposed regulations re liability and complaints are put into place, agencies may choose or be forced to avoid Hague countries.** Through their relationships in other countries they may be put in the position to discourage these countries from joining the Hague Convention.

What is needed rather, is a pro-active, involved central authority that is very knowledgeable about intercountry adoption, who know what good intercountry adoption practice is, who provides it, and through relationships with the Central Authorities in other countries promotes good adoption practices. In a meeting we recently had with officials of the Ministry of Civil Affairs in China (for whom the China Center for Adoption is under), this is what they emphasized they wanted and needed from the US in order for them to have the Hague Convention be relevant.

II. 96.41 Complaint Process

We believe that the current wording makes the complaint process very problematic for the following reasons:

- 1) **No definition of a complaint.** There are many parts of the process that are not controlled by the agency such as the requirements of adoptive parents by the child country, the legal processes and changes and delays thereof, and so on. Further more, what is a frivolous or valid complaint? And should there not be some knowledge of the person who is making the complaint? **We suggest this definition: A complaint is a written document, which is signed and dated, and clearly defines a specific aspect of a service that is under the control of the agency and governed by the regulations.**
- 2) **Lack of clarity regarding the complaint process.** It is unclear how a complaint how or when a complaint is processed under Hague regulations. For example, has the complainant tried to resolve the issue through the complaint process of the agency? We believe a complainant should attempt to do that first. Also, is there a limitation length of time after the grievance or adoption when a complaint can be processed? Can an adoptive parent file 5 or 10 years after the adoption? The Courts provide recourse in wrongful adoptions so a complaint regarding service delivery should have a short filing time.
- 3) **Lodging of complaints by birthparents.** The convention makes it clear that services to birthparent are the responsibility of the child's country or origin (sending country). Here again **the regulations make agencies responsible for services, which it usually has no control over, and such control would be in conflict with the Convention.**

III. 96.92 Dissemination of Information about complaints

This regulation requires that an accrediting entity disclose the receipt, status, and disposition of a complaint to anyone and have procedures for disclosing information about an **unsubstantiated complaint**. **We find this regulation prejudicial and an affront to due process.** While it is right for the public to have information about complaints that have been fully investigated by competent staff of the accrediting body, and found substantiated, it is wrong to have provide information about unsubstantiated or uncompleted investigations of complaints. This is especially true in international adoption where the emotional stakes are so high and unknowns and changes abound in third world countries where adoption has not been a part of the culture and legal process. **The principle of an organization having the right to a fair and unbiased process by experts before its' reputation and functioning can be negatively damaged, seems like a sound principle in a democratic society.**

IV. Deemed Status

Children's Home Society and Family Services is fully accredited by the Council of Accreditation (COA). We have currently completed our work for reaccreditation and to our knowledge, COA accreditation includes all proposed Hague regulations and goes considerably beyond them.

Recognition of compliance is not an exception to accreditation, but is simply an equitable mechanism for crediting established compliance with requirements that have parity with those of Hague Convention Accreditation.

In principle, offering recognition to previously accredited agencies delivering intercountry adoption services is completely consistent with the IAA as a mechanism for recognizing proven compliance with those standards that are sufficiently similar to standards in the proposed, and eventually the final, rules. The process of recognition promotes efficiency of the accreditation process by eliminating a duplication of efforts on the part of both the organization and the accrediting entity. This is particularly significant given the human resource and financial impacts required by the accreditation process and the ambitious timeframe the State Department expects for the completion of the initial accreditation cycle. Indeed, offering recognition will speed up the U.S. recognition of the convention, which given the number of agencies expecting to apply, the very small number of organizations prepared to become an accrediting body, and magnitude of the process, becomes a most critical factor in the US becoming a timely member of the Hague Convention on Intercountry Adoption.

V. 96.25 Applicability of Hague standards to non-Convention countries

This regulation is silent on whether the access to agency files applies only to case files for Convention countries. In order to provide clarity in this manner and to provide proper limits, additional language should state that the IAA applies only to adoption services in Convention countries and that an accreditor is limited to reviewing information about Convention-related adoptions in reaching an accreditation decision.

VI. 96.33 (e) Sufficient cash reserves

For multi-service agencies, such as CHSFS, that provide many services in addition to intercountry adoption, it is unclear whether the requirement for sufficient financial resources applies only to those operating expenses of the intercountry adoption services or also to those of all other services delivered by the agency. We request that the regulations clarify this and in order to put multi service agencies at the same level as single service international adoption agencies, that clarification states that reserves apply only to intercountry adoption related expenses.

VII. 96.37(f)(1), 96.37(g), 96.45(b)(7) Education and experience requirements for those conducting home studies and child background studies

We urge the Department to reconsider the requirement that employees who perform home studies have a master's degree. While we have few staff without masters degrees, the staff that we do have are valued greatly for their knowledge and experience. For the reasons discussed below, we recommend that 96.37(f)(1) be revised to allow accredited agency employees to conduct home studies if they have a minimum of a bachelors degree in social work from and accredited university or college, as long as they are supervised by an employee who

meets the educational requirements required in 96.37(f)(1), and meet the minimum required by state licensing for adoption and social workers (where applicable).

Thank you for the opportunity to respond to the proposed regulations. It is our sincere hope that the reputation and functioning of intercountry adoption be improved and that the Hague Convention on Intercountry Adoption be an instrumental force in that improvement. This can only be accomplished by regulations that are clear and workable given the realities of the international adoption.